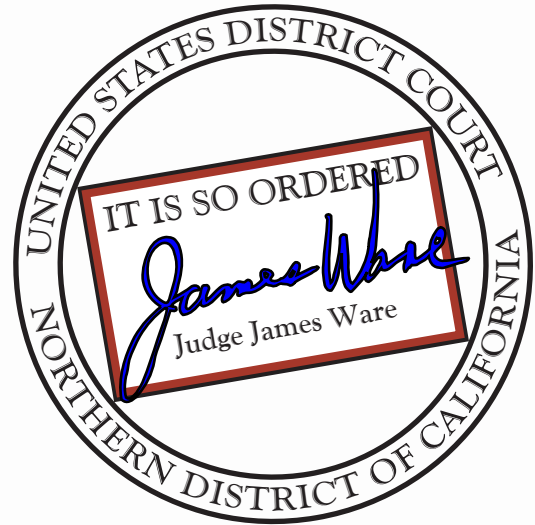


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DDR Partners, Inc. and Western Athletic Club, Inc.



**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

JUAN GONZALEZ and RICARDO  
MENDOZA, individually, and on behalf  
of all others similarly situated,

Plaintiffs,

v.

DDR PARTNERS, INC. dba PACIFIC  
ATHLETIC CLUB; WESTERN  
ATHLETIC CLUBS, INC. dba PACIFIC  
ATHLETIC CLUB and, DOES 1-10,

Defendants.

Case No. C 08 03814 JW

**STIPULATED REQUEST FOR COURT  
APPROVAL OF SETTLEMENT OF  
PLAINTIFFS' CLAIMS UNDER THE  
FAIR LABOR STANDARDS ACT;**

**STIPULATION FOR DISMISSAL WITH  
PREJUDICE; AND**

**[PROPOSED] ORDER**

F.R.C.P. 41(a)(1)(A)(ii)

1 Plaintiffs Juan Gonzalez and Ricardo Mendoza ("Plaintiffs") and Defendants DDR  
 2 Partners, Inc. ("DDR") and Western Athletic Club, Inc. ("WAC") (DDR and WAC together are  
 3 referred to as "Defendants") (Plaintiffs and Defendants are referred to collectively as the  
 4 "Parties"), by and through their respective counsel, jointly request that the Court grant approval of  
 5 their proposed settlement of Plaintiffs' claims under the Fair Labor Standards Act ("FLSA").<sup>1</sup>

6 In addition, provided that the Court approves the settlement of Plaintiffs' FLSA claims, the  
 7 Parties stipulate to dismiss this action with prejudice in its entirety pursuant to the Federal Rules  
 8 of Civil Procedure ("F.R.C.P."), Rule 41(a)(1)(A)(ii).

9 **I. COURT APPROVAL OF FLSA SETTLEMENTS IS REQUIRED.**

10 An employee's claim under the FLSA may not be settled without the supervision and  
 11 approval of either the Secretary of Labor or a United States District Court. *Lynn's Food Stores,*  
 12 *Inc. v. United States, et al.*, 679 F.2d 1350, 1352-53 (11th Cir. 1982); *Zhou v. Wang's Restaurant,*  
 13 2006 U.S. Dist LEXIS 84397, \*3-4 (N.D. Cal. November 9, 2006). The proper procedure for  
 14 obtaining Court approval of the settlement of FLSA claims is for the parties to present to the Court  
 15 a proposed settlement." *Zhou*, 2006 U.S. Dist. LEXIS 84397 at \*4.

16 In reviewing the settlement agreement, the Court must determine whether the proposed  
 17 settlement is a fair and reasonable resolution of a *bona fide* dispute. *Lynn's Food Stores*, 679 F.2d  
 18 at 1355. "If a settlement in an employee FLSA suit does reflect a reasonable compromise over  
 19 issues, such as . . . computation of back wages, that are actually in dispute[,] . . . the district court  
 20 [may] approve the settlement in order to promote the policy of encouraging settlement of  
 21 litigation." *Id.*

22  
 23 **II. THE PROPOSED SETTLEMENT OF PLAINTIFFS' FLSA CLAIMS IS A FAIR**  
 24 **AND REASONABLE RESOLUTION OF A BONA FIDE DISPUTE REGARDING**  
**ALLEGED UNPAID OVERTIME WAGES.**

25 Plaintiffs claim that they were deprived of overtime compensation for hours worked in  
 26 excess of 40 per week in violation of the FLSA and seek unpaid overtime compensation,

27  
 28 <sup>1</sup> The Parties have negotiated and agreed upon a settlement of Plaintiffs' non-FLSA claims,  
 however, that settlement does not require Court approval and the terms of that settlement are  
 confidential.

1 liquidated damages and related attorney's fees. (First Amended Complaint ("FAC"), ¶¶21-28.)  
2 Court approval of the Parties' settlement is proper because a *bona fide* dispute exists as to the  
3 liability for, and computation of, Plaintiffs' alleged unpaid overtime claims under the FLSA.

4 Prior to and in connection with the Parties' May 27, 2009 mediation, Defendant WAC  
5 provided Plaintiffs with copies of their time cards and payroll records. Counsel for Plaintiffs and  
6 Defendant WAC extensively reviewed these records. Based upon this review, Plaintiffs claimed  
7 unpaid overtime of approximately \$320 for Mendoza and \$2,527 for Gonzalez. WAC disputed  
8 that Plaintiffs were owed *any* alleged unpaid overtime and further disputed Plaintiffs' method for  
9 calculating the alleged unpaid overtime based upon the records. Defendant WAC calculated that,  
10 even using the most liberal methodology and assuming liability in favor of Plaintiffs, based upon  
11 their time cards and payroll records Plaintiffs could claim no more than \$216 in alleged unpaid  
12 overtime for Mendoza and \$121 for Gonzalez. WAC also disputed Plaintiffs' claims for  
13 liquidated damages under the FLSA on the grounds that it had acted in good faith and with a  
14 reasonable basis for believing its practices complied with the FLSA.

15 Given the Parties' *bona fide* dispute regarding liability and the computation of alleged  
16 unpaid overtime and liquidated damages under the FLSA, and after weighing the risks and costs of  
17 continued litigation, the Parties reached a compromise to settle Plaintiffs' FLSA claims that  
18 provided for settlement payments as follows: (a) payment to Plaintiff Gonzalez in the gross sum of  
19 \$824 for alleged unpaid overtime and liquidated damages under the FLSA, (b) payment to  
20 Plaintiff Mendoza in the gross sum of \$576 for alleged unpaid overtime and liquidated damages  
21 under the FLSA, and (c) payment to "Law Offices of Adam Wang" in the sum of \$2,000, for and  
22 relating to Plaintiffs' attorneys' fees and costs incurred in litigating the FLSA claims contained in  
23 the lawsuit.

24 Given the information contained in the Plaintiffs' time cards and payroll records, the  
25 settlement amounts set forth in the settlement agreement represent a fair and reasonable resolution  
26 of the Parties' *bona fide* dispute regarding Plaintiffs' claims under the FLSA and, on that basis,  
27 seek the Court's approval of the settlement agreement. A true and correct copy of the Parties'  
28 FLSA settlement agreement is attached hereto as Exhibit 1.

**STIPULATION OF DISMISSAL WITH PREJUDICE**

Pursuant to F.R.C.P. 41(a)(1)(A)(ii), the Parties also hereby stipulate to dismiss this action with prejudice, provided that the Court approves of the settlement of Plaintiffs' FLSA claims.

Dated: July 15, 2009

LAW OFFICES OF ADAM WANG

/S/ Adam Wang  
ADAM WANG  
Attorneys for Plaintiffs

Dated: July 15, 2009

MORGAN LEWIS & BOCKIUS

/S/ Eric Meckley  
ERIC MECKLEY  
Attorneys for Defendants

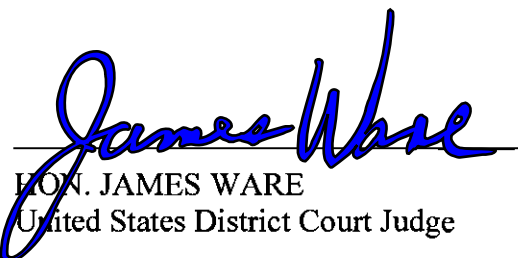
**ORDER**

IT IS HEREBY ORDERED, based upon good cause appearing, that the Court FINDS the compromise of Plaintiff Gonzalez's and Plaintiff Mendoza's overtime, liquidated damages and attorneys' fees claims under the Fair Labor Standards Act ("FLSA") is a fair and reasonable compromise of FLSA claims as to which there are *bona fide* disputes regarding liability and computation of back wages.

IT IS FURTHER ORDERED that, based on this finding and the Parties' stipulation, the Court hereby DISMISSES THIS ACTION WITH PREJUDICE, pursuant to Federal Rule of Civil Procedure, Rule 41(a)(1)(A)(ii).

The Clerk shall close this file.

Dated: July 29, 2009

  
HON. JAMES WARE  
United States District Court Judge